

June 4, 2007

Superintendent Linda McCulloch  
Office of Public Instruction  
1227 Eleventh Avenue  
Helena, MT 59620-2501

Re: Request for Letter of Advice

Dear Superintendent McCulloch:

You have requested a letter of advice on the following questions:

If a school district has elected to offer full-time kindergarten, as authorized by SB 2, can the district adjust its budget limitation under Mont. Code Ann. § 20-9-308 to add the budget authority necessary to expend the additional ANB funding which is provided for full-time kindergarten?

Is a school district implementing a full-time kindergarten program entitled to receive additional quality educator payments commensurate with the additional staff required to implement the program?

Senate Bill 2 was enacted during the 2007 Special Session. It included a number of changes to school funding laws, including authorization for districts to offer either a half-time (a minimum of 360 hours) or a full-time Kindergarten program (a minimum of 720 hours). If a district elects to offer a full-time kindergarten program, SB 2 provides full-time ANB funding. In order to implement funding for districts transitioning from half-time to full-time kindergarten, SB 2 authorizes the Superintendent of Public Instruction to increase the ANB count for a district based upon full-time enrollment. This calculation is made by counting kindergarten enrollment in the previous year as full-time enrollment for the purpose of calculating ANB.

SB 2 clearly contemplates that districts will begin to implement full-time kindergarten programs in the 2007-2008 school year. You have raised the question of how such implementation affects a district's budget limitation. If a district is not allowed to

increase its budget limitation for this increase in ANB funding, a district which is presently operating at or above its maximum general fund budget would have to absorb the cost of a full-time kindergarten program within its existing budget. Such an outcome effectively punishes such a district if it elects to provide a full-time kindergarten program. In order to offer the program the district would be forced to look elsewhere in its budget to make cuts to accommodate full-time kindergarten.

When interpreting statutes, one is instructed that “the intention of the legislature is to be pursued if possible.” Mont. Code Ann. § 1-2-102. Any interpretation is also required to be reasonable. Mont. Code Ann. § 1-3-233.

A reasonable interpretation of SB 2 leads to the conclusion that a district, electing to offer a full-time kindergarten program, may adopt a budget for 2007-2008 which adds the ANB funding that a district receives for full-time kindergarten enrollment to the previous year’s budget. Any other interpretation would result in harm to a district which is operating at or above its maximum general fund budget. The clear intention of SB 2 was to give districts the option of offering full-time kindergarten and to provide a funding source for a district to do so. An interpretation that results in a disincentive to districts to provide such a program and to accept the corresponding funding is not reasonable or consistent with legislative intent.

Finally, this conclusion is consistent with Mont. Code Ann. § 1-2-113 which requires that any statute imposing a new duty on a school district must provide a corresponding funding mechanism. While SB 2 allows districts to elect whether or not to offer full-time kindergarten, forcing a district that elects to do so to make cuts in other areas in order to accommodate the new program effectively renders the corresponding funding useless.

Therefore, it is my conclusion that if a school district elects to offer full-time kindergarten, as authorized by SB 2, it may increase its budget limitation based upon an ANB calculation that adjusts the previous year’s budget to reflect full-time kindergarten enrollment.

As to your second question, the plain language of SB 2 entitles a district offering a full-time kindergarten program to receive a quality educator payment for the additional full-time equivalent staff necessary to implement the program. SB 2 amends § 20-9-306(15), the relevant provision of law. It provides, “‘total quality educator payment’ means the payment resulting from multiplying \$3036 for fiscal year 2008 and \$3,042 for each succeeding fiscal year times the number of full-time equivalent educators as provided in 20-9-327.” Thus, the district is entitled to receive the quality educator payment for each additional full-time equivalent educator required to implement a full-time kindergarten program.

Superintendent Linda McCulloch

June 4, 2007

Page 3

This letter should not be construed as a formal Opinion of the Attorney General.

Sincerely,

ALI BOVINGDON

Assistant Attorney General

anb/jym